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Description of document: **Office of Government Ethics (OGE) Ethics Program Review Reports of the Federal Aviation Administration (FAA), 1998, 2003, & 2010**

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Source of document: OGE FOIA Officer  
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United States  
**Office of Government Ethics**  
1201 New York Avenue, NW, Suite 500  
Washington, DC 20005-3917

October 13, 2010

Tracking No.: OGE FOIA FY 10/89

The Federal Aviation Administration (FAA) referred your Freedom of Information Act (FOIA) request dated September 4, 2010, to the Office of Government Ethics (OGE) for response. In your request, you asked for copies of the last three FAA Ethics Program Review reports.

In response, OGE is enclosing copies of the February 1998, February 2003, and July 2010, FAA Ethics Program Review reports, without charge.

Sincerely,

A handwritten signature in cursive script that reads "Elaine Newton".

Elaine Newton  
OGE FOIA Officer

Enclosures



United States  
**Office of Government Ethics**  
1201 New York Avenue, NW., Suite 500  
Washington, DC 20005-3917

February 3, 1998

Rosalind A. Knapp  
Deputy General Counsel  
Department of Transportation  
400 Seventh Street, SW.  
Room 10428  
Washington, DC 20590

Dear Ms. Knapp:

The Office of Government Ethics (OGE) has completed an ethics program review of the headquarters' operation of the Federal Aviation Administration (FAA),<sup>1</sup> which is part of the Department of Transportation (DOT). The review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended (Ethics Act). Our objective was to determine the program's effectiveness, measured largely by its compliance with applicable laws and regulations. To achieve our objective, we examined the following program elements: the administration of the ethics program, the public and confidential financial disclosure systems, ethics education and training, counseling and advice services, the acceptance of gifts of travel payments from non-Federal sources, and FAA's ethics officials' relationship with DOT's Office of the Inspector General (OIG) and FAA's Office of Civil Aviation Security Operations' (OCASO) Investigations Division. Our review was conducted in November and December 1997. An exit meeting, which you attended, was held on January 8, 1998. This report summarizes our findings, conclusions, and recommendations.

FAA's ethics program needs to be improved. While we found that FAA ethics officials are adequately providing employees ethics training and advice, they are poorly administering FAA's financial disclosure systems. Immediate corrective actions are needed to bring the financial disclosure systems into conformance with our laws and regulations. Corrective actions include: (1) reviewing the large backlog of public and confidential financial disclosure reports, (2) ensuring that all employees who were required to file confidential reports in 1996 and 1997 have done so, (3) developing a reliable tracking system--which probably should be automated--to account for the collection and review of all required confidential reports,<sup>2</sup> and (4) developing a method to collect confidential reports within 30 days of when employees assume covered positions.

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<sup>1</sup>This review did not assess any aspect of FAA's regional or field office ethics program.

<sup>2</sup>A data base tracking system would also be a useful tool for tracking employees' receipt of annual ethics training.

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To a limited extent, we believe that some of the financial disclosure systems' deficiencies could be corrected by issuing and following FAA's draft Order, entitled Ethical Conduct and Financial Disclosure Program. These new procedures, however, are not a panacea to solving the current poor condition of the financial disclosure systems.

We note that ethics officials had begun to review the backlog of public and confidential reports by the time of our January exit meeting. As you know, however, much work remains. We strongly advise that you keep abreast of FAA's progress in fully accomplishing all of our recommendations.

FAA's program staffing situation is troublesome. Though our follow-up reviews on the recommendations resulting from our 1994 FAA ethics program review suggested that adequate staffing resources had been dedicated to administer FAA's ethics program, it appears that the program has experienced some staffing problems over the past two years. We encourage you and managers in FAA's Office of the Chief Counsel to thoroughly examine the ethics program staffing situation and determine how best to ensure that appropriate staff is assigned to the program at all times.

**STAFF RESPONSIBLE FOR ADMINISTERING  
FAA'S ETHICS PROGRAM HAS VARIED**

The level of staff responsible for administering FAA's ethics program has varied over the past two years and has included staff changes and work assignment adjustments. To some extent, these changes and adjustments may have contributed to ethics officials' inability to accomplish all program requirements. As staff changes were occurring and work assignments were made, it appears that managers within the Office of the Chief Counsel did not adequately consider the possible negative effects on (nor did they monitor) the functioning of FAA's ethics program as a whole. In addition, since overall ethics program management oversight by your Office is limited, you were unable to detect or possibly prevent the program's deterioration.

You, as DOT's Designated Agency Ethics Official, and your immediate staff provide overall direction to ethics officials throughout DOT. For the approximately 47,000 FAA employees who are located in headquarters in Washington, DC and in region and field offices around the country, officials within the Office of the Chief Counsel are responsible for administering the agency's ethics program. The newly appointed FAA Deputy Chief Counsel, Mr. James Whitlow--who assumed his position in approximately June 1997--serves as FAA's Deputy Ethics Official. Day-to-day program management responsibility, however, rests with the Associate Counsel for Ethics, Mr. John Walsh, who has been involved in the ethics program at FAA for many years. Currently, in addition to

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Mr. Walsh, the full-time ethics staff in headquarters consists of Ms. Lisa Baccus, who is also an attorney, and Mr. Michael Triplett, who is an administrative support staff person.

Ms. Baccus has been a member of the ethics staff for about two years, but has only been marginally involved in "routine" ethics program functions since her appointment. Shortly after joining the staff, she was assigned to work almost exclusively on an ethics-related matter concerning former FAA employees who received voluntary separation buy-outs. Mr. Walsh has also been working on this matter, but to a lesser extent. Mr. Triplett, a recent hire, came on board in the August 1997 time frame, which was several months after the unexpected retirement of his predecessor in April.

In addition to administering the headquarters ethics program, both Mr. Walsh and Ms. Baccus also assist assistant chief counsels, who are in FAA regional offices. Assistant chief counsels serve as Designated Ethics Counselors for their respective employees.

#### MANY IMPROVEMENTS REQUIRED FOR FAA'S PUBLIC AND CONFIDENTIAL FINANCIAL DISCLOSURE SYSTEMS

We found three serious financial disclosure system deficiencies that should be immediately corrected.

- Approximately 190 public reports that were filed in 1997 have not been reviewed.<sup>3</sup> Also, approximately 3,500 confidential reports that were filed in 1996 and 1997 have not been reviewed.
- Since there are no accurate up-to-date lists of employees required to file confidential reports (or any other reliable tracking system in place), ethics officials cannot ensure that all employees who should have filed in 1996 and 1997 have done so.
- Ethics officials have not developed a method to ensure that confidential reports are filed within 30 days of when employees assume covered positions.<sup>4</sup>

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<sup>3</sup>We note, however, that nine FAA public reports that were submitted directly to your Office in 1997 were reviewed timely. This included two reports that were subsequently forwarded to OGE in accordance with 5 C.F.R. § 2634.602(c)(vi).

<sup>4</sup>We also identified this deficiency in our July 1994 report. Though our follow-up review in March 1996 indicated that this problem had been corrected, we do not believe that any changes have actually taken place. The existing confidential system written

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In addition to these three deficiencies, we also found other elements of the financial disclosure systems that require correcting or strengthening. First, though basic written procedures exist that document how the financial systems are to be administered, we found that these procedures are not being followed and, consequently, are not serving as a useful management tool. Ethics officials have recently drafted new procedures--FAA draft Order 3750.xx (Ethical Conduct and Financial Disclosure Program). Not only are these new procedures more in line with the requirements of the Ethics Act, but they clearly address and assign program responsibilities. With some relatively minor clarifications and additions, we believe that this Order, when adopted, will assist ethics officials in getting the ethics program back on track. Second, ethics officials could not account for two 1997 public reports which we found to be missing based on our examination of the public reports collected in 1997 versus the list of employees required to file. Ethics officials need to determine the status of these reports and take appropriate corrective action if they determine that employees did not file as required.

#### Background On The Unreviewed Public And Confidential Reports

At the start of our examination of financial disclosure reports it was evident that FAA ethics officials had not reviewed the public reports filed in 1997 and the confidential reports filed in both 1996 and 1997. The lack of review was primarily attributed to officials working on more pressing ethics-related business in both 1996 and 1997. In addition, they stated that the unexpected retirement of the ethics program's administrative support staff person in 1997 greatly affected the ongoing financial disclosure process.

You were first informed of the backlog of unreviewed reports on December 8, 1997 when we advised Mr. Walsh to contact your Office. At the same time, he informed Mr. Whitlow and the Chief Counsel of the backlog. Since that time, but prior to our exit meeting, you and Mr. Whitlow agreed on a corrective action plan whereby all public reports will be reviewed, and most will be certified, by January 31, 1998. This includes accounting for the two missing public reports. You also agreed that all confidential reports will be reviewed, and that most will be certified, by

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procedures briefly state that new entrant reports should be collected within 30 days of employees assuming covered positions, but we did not find evidence that reports are actually being collected. Within the backlog of unreviewed reports, ethics officials were unable to offer any examples of employees who filed new entrant reports within 30 days of assuming covered positions.

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March 31, 1998.<sup>5</sup> In addition, by the end of March, ethics officials will be able to ensure that all employees who were required to file confidential reports in either 1996 or 1997 have done so. This includes developing a reliable list of filers.

As discussed, taking into account the large number of employees and reports requiring tracking, we highly encourage ethics officials to consider implementing a data base system to assist them. During our review we suggested that they consider borrowing the "tracking technology" in use at another agency. We also provided the name of a person to contact who we believe would be helpful.<sup>6</sup> In addition, we believe that ultimately the same data base could be especially helpful to ethics officials for tracking employees' receipt of annual ethics training.

#### BASIC EDUCATION AND TRAINING REQUIREMENTS ARE MET

Both the initial ethics orientation and annual ethics training requirements are being met, but only limited monitoring of employees' receipt of annual ethics training is performed. Also, unfortunately, ethics officials do not offer employees any other useful education-type materials during the year. We suggested that on an occasional basis ethics officials provide ethics-related information in FAA's newsletter or post information via electronic mail. We also discussed working towards developing a DOT or FAA ethics home page so that employees can easily obtain ethics information. For now, ethics officials may want to consider publicizing OGE's Web site at <http://www.usoge.gov> for employee use. We promote these types of methods as excellent ways of keeping employees aware of ethics rules and regulations.

Initial ethics orientation is accomplished with the assistance of supervisors, who ensure that a copy of the standards of conduct is provided to new employees. In addition, supervisors provide information about contacting ethics officials.

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<sup>5</sup>At our exit meeting, FAA officials provided an update on their progress to date. They reported that approximately 100 public reports have been initially reviewed and, of those, 75 have been forwarded to Mr. Whitlow for certification. Of the 100 reports, about 25 filers will be contacted for follow-up questions. Approximately 90 public reports remain to be initially reviewed. They also indicated that confidential reports were now in order and that approximately 100 of the 3,500 were reviewed and certified.

<sup>6</sup>Also at our exit meeting, FAA officials indicated that preliminary contact was made.

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As documented in FAA's 1997 annual training plan, ethics officials planned on providing in-person training for headquarters' employees, including showing OGE's videotape entitled "Ethics Inquiry" and allowing time for responding to employee questions. According to ethics officials, by early December they counted approximately 1,000 employees who had attended one of the offered training sessions. Since then, reminder notices have been sent to all supervisors--who are responsible for ensuring that required employees attend annual training. Since they rely on supervisors, ethics officials do not currently on an individual basis track employees' attendance at a training session or receive feedback from supervisors ensuring receipt of training. We discussed with ethics officials our belief that complete reliance on supervisors--most of whom must also receive training--without a formalized feedback system is not adequate to ensure that training requirements are being met. They need to either establish a formal system of feedback from supervisors or track employees' receipt of annual ethics training on an individual basis.

For 1998, ethics officials are hoping to provide computer-based training for some employees. Currently, they are in the early stages of working with a contractor and they believe that this training will be available for at least some employees in 1998. Plans call for providing in-person training to public filers.

#### COUNSELING AND ADVICE PROGRAM APPEARS TO BE SUCCESSFUL

Ethics officials indicated that they provide a large amount of counseling and advice to FAA employees orally. In addition, a significant amount of advice is written. Notwithstanding staffing limitations over the past two years, Mr. Walsh stated that he believes that advice services have been noteworthy. However, he also noted that there has only been time to respond to individual questions, rather than being able to issue proactive or prophylactic advice agencywide.

Our review of files covering the 1996 and 1997 time frame showed that the advice provided by ethics officials to employees was accurate, comprehensive, and timely. Advice provided covered a broad spectrum of issues, including the acceptance of gifts, fund-raising, the resolution of actual or apparent conflicts of interest, travel, outside activities, seeking employment, and post employment. We were impressed with the efforts taken by ethics officials to distribute ethics-related opinions to all Designated Ethics Counsels to keep them informed.

FAA employees often use FAA's electronic mail system to raise questions and obtain ethics-related advice. For the most part, ethics officials respond to employees via electronic mail, except



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when they determine that more formal memorandums and letters of advice are needed. Ethics officials noted that an added benefit of using electronic mail is that it allows for easy coordination among themselves when responding to questions.

#### GIFTS OF TRAVEL PAYMENTS ARE PROPERLY REVIEWED

With concurrence from ethics officials, FAA regularly accepts payments from non-Federal sources for travel, subsistence, and related expenses incurred by agency employees on official travel under the authority of the General Services Administration's Interim Rule 4 at 41 C.F.R. part 304-1, implementing 31 U.S.C. § 1353. We reviewed the gifts of travel offered and approved by ethics officials during 1997 and found that thorough conflicts of interest analyses were performed and that acceptances were appropriately approved.

#### WORKING RELATIONSHIP WITH THE OIG AND THE OCASO INVESTIGATIONS DIVISION

Ethics and OCASO Investigations Division officials stated that an effective working relationship and good communication exist between the respective offices concerning discussing and working on matters involving violations of the standards of conduct or the criminal conflict of interest statutes. In addition, as necessary, the OIG and ethics officials work on and coordinate ethics-related matters.

As you know, an audit concerning voluntary separation buy outs given to former FAA employees was conducted by the OIG in 1995. Subsequent follow-up investigations resulted in referring a large number of cases--involving violations of accepting voluntary separation incentive payments--to a U.S. Attorney's Office for prosecution. According to the Assistant Inspector General for Investigations, further investigations may lead to developing additional post-employment violations. We reminded him that the Director of OGE is to be concurrently notified of conflict of interest referrals to the Department of Justice and provided copies of the referral documents, pursuant to 5 C.F.R. § 2638.603(b). In the recent past, there have not been any referrals involving FAA employees concerning conflict of interest violations.

#### CONCLUSIONS AND RECOMMENDATIONS

FAA's ethics program needs improvement. Priority should be placed on maintaining strong financial disclosure systems balanced with keeping employees aware of the requirements for ethical conduct. Based on your comments at our exit meeting, we believe

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that you will provide the appropriate amount of oversight to ensure that our recommendations are carried out.

We recommend the following.

1. Provide adequate ethics staffing to ensure that all ethics program elements can be accomplished.
2. Eliminate the backlog of unreviewed public reports from 1997.
3. Eliminate the backlog of unreviewed confidential reports from 1996 and 1997.
4. Determine the status of the two missing public reports from 1997 and take appropriate corrective action, if required.
5. Develop an accurate up-to-date list of employees required to file confidential reports and ensure that all employees who should have filed in 1996 and 1997 have done so.
6. Consider implementing a computer data base system to track both the filing of financial disclosure reports and employees' receipt of annual ethics training.
7. Develop a method to ensure that employees who enter covered positions file confidential reports within 30 days.
8. Finalize and issue draft FAA Order 3750.xx.

In closing, I would like to thank you for all of your efforts on behalf of the ethics program. Please advise me within 60 days of the specific actions FAA has taken or plans to take concerning the recommendations in our report. A follow-up review will be scheduled within six months from the date of this report. In view of the corrective action authority vested with the Director of the Office of Government Ethics under subsection 402(b)(9) of the Ethics Act, as implemented in subpart D of 5 C.F.R. part 2638, it is important that ethics officials implement actions to correct these deficiencies in a timely manner. A copy of this report is

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being sent to the FAA Administrator, Mr. Whitlow, the Inspector General, and the Manager, OCASO Investigations Division. Please contact Ilene Cranisky at 202-208-8000, extension 1218, if we may be of further assistance.

Sincerely,

A handwritten signature in cursive script, reading "Jack Covalesski". The signature is written in dark ink and is positioned above the typed name.

Jack Covalesski  
Senior Associate Director  
Office of Agency Programs

Report Number 98 - 004



United States  
**Office of Government Ethics**  
1201 New York Avenue, NW., Suite 500  
Washington, DC 20005-3917

February 28, 2003

Rosalind A. Knapp  
Deputy General Counsel and  
Designated Agency Ethics Official  
Department of Transportation  
400 Seventh Street SW.  
Room 10428  
Washington, DC 20590

Dear Ms. Knapp:

The Office of Government Ethics (OGE) has completed its review of the ethics program of the Department of Transportation's (DOT) Federal Aviation Administration (FAA). This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended (the Ethics Act).

#### HIGHLIGHTS

The FAA ethics program is managed by knowledgeable and enthusiastic ethics officials and there appears to be some improvement in the program since we last reviewed it in 1997. Following that review, FAA eliminated the backlog of thousands of unreviewed financial disclosure reports. However, problems persist in the program, primarily with the financial disclosure systems. Moreover, last year FAA found approximately 1000 employees who had not been filing public financial disclosure reports who should have been required to file.

#### PROGRAM ADMINISTRATION

Pursuant to 5 C.F.R. § 2635.102(b), the Supplemental Standards of Ethical Conduct for Employees of the Department of Transportation (the supplemental standards) (5 C.F.R. part 6001), and FAA Order 3750.7 (the Order), the Designated Agency Ethics Official (DAEO) has designated the FAA Chief Counsel as a Deputy Ethics Official (DEO) charged with coordinating and managing the ethics program at FAA.<sup>1</sup> The DEO has further delegated these duties to the Deputy Chief Counsel and to the Associate Chief Counsel for

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<sup>1</sup> The Order also describes the procedures for administering the financial disclosure systems.

Ethics (ACCE), who has been designated by the DEO as a Deputy Ethics Counselor (DEC). As the DEC, the ACCE carries out the day-to-day ethics functions at FAA headquarters. The ACCE is assisted in the daily management of the FAA headquarters ethics program by a Senior Attorney for Ethics (SAE) and a Program Analyst (PA). In addition, an Assistant Chief Counsel in each region has been designated the DEC for the region. Ethics Program Coordinators (EPC) in various organizations serve as liaison officers to ethics officials in administering the ethics program. Finally, the ACCE is responsible for ensuring that DEC's, EPC's, and any other FAA employees serving in ethics-related capacities are appropriately trained.

#### SUPPLEMENTAL STANDARDS

Section 6001.104(b) of the supplemental standards prohibits an FAA employee, or spouse or minor child of an employee, from holding stock or having any other securities interest in an airline or aircraft manufacturing company, or in a supplier of components or parts to an airline or aircraft manufacturing company. However, at § 6001.104(c) there is an exception to the prohibition for interests in certain publicly traded or available investment funds and at § 6001.104(d) there is a provision for a waiver of the prohibition under certain conditions. The supplemental standards do not have an outside employment/activities prior approval requirement.

#### PUBLIC FINANCIAL DISCLOSURE SYSTEM

The only problem we found with the public financial disclosure system was that 14 reports required to be filed in 2002 had still not been filed. Among the public reports required to be filed were approximately 1000 from employees who had not previously been filing reports but who should have been required to file. All reports filed, including some that were filed late, were reviewed timely and thoroughly and, in fact, FAA ethics officials have exceeded minimal requirements through their use of divestiture and cautionary letters to address problems identified on the reports. Nevertheless, missing or late public (as well as confidential) reports impedes an agency's ability to provide timely and specific conflict of interest advice and, ultimately, its ability to prevent ethics violations. Finally, FAA has only one Presidentially-appointed, Senate-confirmed employee (PAS), the Administrator,<sup>2</sup> whose public report was filed and reviewed timely and a copy transmitted to OGE timely.

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<sup>2</sup>Currently, the Deputy Administrator is not a PAS employee.

As for the approximately 1000 employees who previously had not been filing public reports, most had been filing confidential financial disclosure reports and all, based on their salaries, should have been filing public reports. Most of these employees are in air traffic controller positions. Because they were in pay bands, FAA did not find out automatically that they had reached or exceeded the salary at which they should have been filing public financial disclosure reports. Most of these additional public filers submitted their new entrant reports as part of the 2002 annual filing cycle.

#### CONFIDENTIAL FINANCIAL DISCLOSURE SYSTEM

We also found some problems with the confidential financial disclosure system. Many confidential reports were filed late, especially by new entrant filers, based on our examination of a sample of 103 of 2052 reports required to be filed in 2001. Moreover, we noted in regard to a number of OGE Optional Form 450-As that the "Position/Title" entered was different from the "Position/Title" entered on the previously-filed OGE Form 450. As 5 C.F.R. § 2634.905(d) allows filers to submit the optional form if they can certify to not having changed jobs since filing their previous report, it was unclear whether these OGE Optional Form 450-As had been filed properly.

All 103 reports were reviewed timely. They also appeared to be reviewed thoroughly based on the many reports resulting in letters directing divestiture and cautionary letters.

#### EDUCATION AND TRAINING

Initial ethics orientation exceeds the requirements in subpart G of 5 C.F.R. part 2638, while annual ethics training has been conducted in accordance with subpart G. However, FAA tracks attendance at neither initial ethics orientation nor annual ethics training sessions. OGE strongly suggests that the FAA establish tracking systems for initial ethics orientation and annual ethics training.

Initial ethics orientation is managed generally by supervisors, who provide new employees with the required one hour to review the Order and its attachments, which include a copy of the Standards of Ethical Conduct for Employees of the Executive Branch (Standards), a copy of the supplemental standards, and the names and contact information for the Deputy Chief Counsel and the ACCE. Additionally, during new employee orientation conducted by the Office of Human Resources (OHR), employees watch a CD-ROM which was made by ethics officials in collaboration with OHR a few years ago. The SAE claimed initial ethics orientation was being provided to all new FAA employees. DOT ethics officials provide initial

ethics orientation for DOT PAS employees, including the FAA Administrator.

The ACCE and the SAE claimed that all 12,059 FAA employees in covered positions received annual ethics training in 2001. At the 2002 annual ethics training sessions held during September 16-20, 801 of the approximately 1000 new public filers were trained via teleconferencing. Seven more teleconferencing sessions were scheduled for October. The ACCE stated that the 2002 training heavily emphasized gifts, conflicts of interest, the basic obligations of a Federal employee, and FAA's policies on the use of e-mail and the Internet. Employees in the field were told to contact their Regional Counsel with any questions or concerns, but were also provided with contact information for the Deputy Chief Counsel, the ACCE, and the SAE.

#### COUNSELING AND ADVICE

FAA has a counseling and advice program for agency employees, wherein records are kept, when appropriate, that appears to meet the requirements at 5 C.F.R. § 2638.203(b)(7) and (8). The ACCE estimated he answered approximately 500 queries and the SAE approximately 1000 queries from January 2001 to the time of our review. The most common topics were the widely attended gatherings exception to the gift prohibition at 5 C.F.R. § 2635.204(g) of the Standards, the post-employment restrictions, and outside employment. According to the ACCE, approximately half of the counseling and advice is rendered orally and half is rendered in writing. Notwithstanding the apparent paucity of written counseling and advice for 2002, the ACCE advised us that much of it was erased when the Office of the Chief Counsel switched to Lotus Notes in the early part of 2002. We examined a sample of the written counseling and advice, which we found to be responsive to employees' needs in terms of being complete, accurate, and timely.

Although ethics officials provide post-employment counseling and advice, they do so only in response to requests from employees. The ACCE advised us that he is working with OHR to have the Office of the Chief Counsel included in the "check-out" process for departing employees to enable ethics officials to better provide post-employment counseling and advice to employees.

#### FEDERAL ADVISORY COMMITTEES/COUNCILS

The ethics program for advisory committee/council members appeared to meet all requirements except for the late filing of some of the public financial disclosure reports. FAA has one advisory council, the Federal Aviation Advisory Council (the Council), whose five-member subcommittee, the Air Traffic Services Subcommittee (ATSS), has members who are considered employees.

According to the Air Traffic Management System Performance Improvement Act of 1996, under which the Council was established, ATSS members are to be treated as public filers without regard to whether they work in excess of 60 days in a calendar year as otherwise required by § 101(d) of the Ethics Act. Accordingly, all ATSS members file public reports even though they may not work in excess of 60 days. Also, certain ethics restrictions are levied on ATSS members, including not allowing them to own stock in or bonds of an aviation or aeronautical enterprise (unless the financial interest is in a "diversified mutual fund" or exempted by 18 U.S.C. § 208). Other members of the Council are considered representatives of industry except for two members appointed by the Secretaries of Transportation and Defense.

We examined the most recent public reports filed by the five ATSS members, consisting of three new entrant and two annual reports. The reports did not indicate the date received by FAA; accordingly, using the dates signed by the filers, we found that the three new entrant reports were filed timely and the two annual reports were filed late.<sup>3</sup> The reports were reviewed timely, based on the dates the filers signed the reports, and were reviewed thoroughly. The new entrant filers received initial ethics orientation and the annual filers received annual ethics training, as required. The two members of the Council appointed by the Secretaries of Transportation and Defense, the Deputy Secretary of Transportation and the Department of Defense Liaison for Civil Aviation, are public filers whose service on the Council is considered when their reports are reviewed.

In addition to the Council, FAA has seven advisory committees, each chartered under an FAA order.<sup>4</sup> Based on an examination of the pertinent orders, all of which contained current charters, and discussions with ethics officials, we were satisfied with FAA's determination that all FAA advisory committee members are representatives of private industry or state or local governments. Making the proper determination as to whether members are representatives or special Government employees (SGE) is vital as SGEs, not representatives, are subject to financial disclosure, the

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<sup>3</sup>One annual filer dated his report August 19, 2002 and the other annual filer dated her report September 3, 2002.

<sup>4</sup>The advisory committees consist of Air Traffic Procedures Advisory Committee, the Research, Engineering, and Development Advisory Committee, the Aviation Security Advisory Committee, the Aviation Rulemaking Advisory Committee, the Commercial Space Transportation Advisory Committee, and the Aging Transport Systems Rulemaking Advisory Committee. The seventh, RTCA, Inc., is utilized as an advisory committee.



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standards of conduct, and all or some of the provisions in four criminal conflict of interest statutes (18 U.S.C. §§ 203, 205, 207, and 208).

#### ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

Travel payments accepted by agency employees on behalf of FAA had been properly approved in accordance with 31 U.S.C. § 1353 and the implementing regulation at 41 C.F.R. part 304-1 (although underlying records for a few acceptances were missing). However, at the time of our fieldwork FAA had not forwarded to DOT FAA's most recent report of such travel payments of more than \$250 per event, nor had it included all payments in an earlier report to DOT, for compilation in DOT's semiannual reports to OGE required by 41 C.F.R. § 304-1.9.

DOT's semiannual report submitted to OGE for the period April 1, 2001 - September 30, 2001 revealed 28 acceptances of travel reimbursements by FAA employees. The underlying records for four acceptances were missing, while we were provided underlying records for another four acceptances during this period that had not been reported to OGE. However, we found that all of the acceptances for which there were records had been properly approved, including having been analyzed for conflicts of interest in accordance with 41 C.F.R. § 304-1.5. Finally, FAA had not forwarded to DOT its report of payments for compilation by DOT in its semiannual report to OGE for the period October 1, 2001 - March 31, 2002. FAA ethics officials advised us that the failure to forward the report to DOT was due to staffing problems and that the report would be forwarded as soon as possible.

#### OTHER MATTERS

Neither the ACCE, an FAA Office of Internal Security (OIS) representative, nor a DOT Office of the Inspector General (OIG) special agent was aware of any referrals for prosecution to the Department of Justice, since January 2001 to the time of our review, of any alleged violations of the criminal conflict of interests statutes by FAA employees. Accordingly, we were unable to assess current compliance with the requirement at 5 C.F.R. § 2638.603 for agencies to notify OGE of such referrals. FAA ethics officials appear to be complying with 5 C.F.R. § 2638.203(b)(12), which requires the DAEO to ensure that the services of the agency's OIG, or organization performing similar functions, are utilized when appropriate, including the referral of matters to and the acceptance of matters from the OIG or other organization. According to the ACCE, all matters requiring investigation, including alleged violations of the criminal conflict of interest statutes, are referred to OIS. He has also made a few referrals to OIS concerning non-criminal, ethics-related

matters. The OIS representative advised us that only alleged criminal violations are referred for investigation to OIG.

The ACCE advised us that he generally follows up on referrals to OIS to determine whether FAA management takes disciplinary action, although he has frequently been dissatisfied with the action taken or that action has not been taken. He generally does not follow up on referrals to OIG although, on occasion, OIG has contacted him regarding referred matters.

#### CONCLUSIONS AND RECOMMENDATIONS

The FAA has all the elements of an effective ethics program managed by knowledgeable and enthusiastic ethics officials. The strong points in the program include the counseling and advice program and the use of cautionary letters in the financial disclosure program. Accordingly, there appears to be some improvement in the program since we last reviewed it in 1997. Following that review, FAA eliminated the backlog of thousands of unreviewed financial disclosure reports. However, problems persist in the program, primarily with the financial disclosure systems. Moreover, last year FAA found approximately 1000 employees who had not been filing public financial disclosure reports who should have been doing so. During our discussions with the ethics officials we learned that they believe additional staffing would help the program. Further, our review revealed evidence of the need for additional resources in the program.

We should note that based on discussions with FAA ethics officials, subsequent to completion of the formal field work, progress had been made in the financial disclosure programs. They advised that a majority of the 90 outstanding confidential disclosure reports had been cleared and that only 2 of the 14 missing public disclosure reports were still pending.

Accordingly, we recommend that you ensure that FAA:

1. Has public filers whose reports were delinquent in 2002 file their reports as required and, pursuant to amended 5 C.F.R. § 2634.704 (67 Fed. Reg. 49857 (Aug. 1, 2002)), assesses the \$200 late filing fee or, as appropriate, waives the fee.
2. Establishes procedures for the timely filing of new entrant confidential reports.
3. Has confidential filers submit their OGE Optional Form 450-As in accordance with 5 C.F.R. § 2634.905(d), especially the requirement for the form to be submitted only if the filer has not changed jobs.

Ms. Rosalind A. Knapp  
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4. Submits to DOT timely and complete reports of travel payments of more than \$250 per event under 31 U.S.C. § 1353 for compilation in DOT's semiannual reports to OGE.

In closing, I wish to thank the FAA ethics officials for their efforts on behalf of the ethics program. Please advise me within 60 days of the actions you have taken or plan to take on each of the recommendations of our report. A brief follow-up review will be scheduled six months from the date of this report. In view of the corrective action authority vested in the Director of OGE under subsection 402(b)(9) of the Ethics Act, as implemented in subpart D of 5 C.F.R. part 2638, it is important that the FAA implement actions to correct these deficiencies in a timely manner. We are sending a copy of this report to the FAA DCC and the DOT IG. If you have any questions please contact Charles R. Kraus at 202-208-8000, extension 1154.

Sincerely,

A handwritten signature in cursive script, reading "Jack Covalesski".

Jack Covalesski  
Deputy Director  
Office of Agency Programs

Report Number 03-009



United States Office  
Of Government Ethics

## Ethics Program Review

# Federal Aviation Administration

July 2010 Report

## Introduction

### OBJECTIVE, SCOPE, AND METHODOLOGY

As part of the Office of Government Ethics' (OGE) monitoring activities, OGE conducted a focused review of the financial disclosure program administered at the Federal Aviation Administration (FAA), United States Department of Transportation (DOT). This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended (Ethics Act). OGE's primary objective was to determine the financial disclosure program's compliance with applicable ethics laws and regulations. OGE also evaluated processes and procedures to assess the strengths and weaknesses of FAA's financial disclosure system and its impact on the agency's ability to prevent and detect ethics violations through the use of financial disclosure reports.

To meet this objective, OGE's review was limited to the examination of a judgmental sample of both public and confidential financial disclosure reports that were required to be filed at FAA in 2009, covering calendar year 2008. Prior to the start of the examination, OGE confirmed with ethics officials that FAA had 2,016 public financial disclosure filers and 9,589 confidential filers. Of the 2,016 public reports that were required to be filed, 440 were reviewed, certified, and retained at FAA headquarters while the remaining reports were reviewed, certified, and retained with FAA's Regional/Center Designated Ethics Counselors (DECs) in the respective regions. OGE limited its examination of public reports to the 440 reports that were reviewed and certified at FAA headquarters. These 440 reports consisted of 394 incumbent reports, 30 new entrant reports, and 16 termination reports.<sup>1</sup> Of the 9,589 confidential reports, OGE randomly selected 414. Of these 414 reports, 151 were OGE Form 450 reports, 224 were Optional OGE Form 450 reports (OGE Form 450-A), and 39 were new entrant reports. OGE examined the reports to evaluate the timeliness of filing, review, and certification. OGE's on-site fieldwork was conducted in October 2009.

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<sup>1</sup>OGE did not examine the public reports filed by the FAA Administrator, Deputy Administrator, Chief Counsel, or Deputy Chief Counsel for Policy and Adjudication as these reports are reviewed and certified by DOT's Designated Agency Ethics Official (DAEO).

## **Ethics Program Review: Federal Aviation Administration**

### **FAA's E-filing System**

In 2007, FAA contracted with a private contractor to develop an electronic application of the confidential financial disclosure form, or e-filing system, to help FAA manage OGE's confidential financial disclosure filing requirements. This basic electronic program, which does not allow reviewers to certify the form electronically, was used FAA-wide over the last two filing cycles. Based on that experience, the DEO determined that significant enhancements were needed for continued use. As a result, in 2009, FAA began working with the contractor to help enhance the existing system. OGE was advised that FAA is also considering the development of an e-filing system to help FAA manage OGE's public financial disclosure filing requirements as well.

### **RESULTS IN BRIEF**

When OGE last reviewed FAA's ethics program in February 2003, several recommendations were made for improvement in the areas of financial disclosure. In that review, OGE recommended that FAA (1) collect missing public reports and collect late filing fees unless filers request and obtain waivers from OGE; (2) establish procedures for the timely identification of new entrant filers; and (3) ensure that confidential filers file an OGE Optional Form 450-A.

OGE is pleased to see in its current examination that most of the recommendations have resulted in improvements to the public financial disclosure program. However, OGE's examination of FAA's confidential system revealed that improvements are still needed. Specifically, OGE found timeliness issues with resolving real or potential conflicts, collecting new-entrant reports, and reviewing and certifying confidential reports filed within the FAA regions. Many of these weaknesses identified may be corrected with the planned enhancements to FAA's e-filing system. However, in light of the findings identified within the regions, OGE recommends that FAA conduct routine assessments within its regions to assess the quality and timeliness of reviews of financial disclosure reports. OGE is also recommending that FAA update its written procedures to ensure compliance with the Ethics Act.

Several technical errors were also identified during our examination of financial disclosure reports. Based on assurances received from the Ethics Office, OGE is making no formal recommendations but is making suggestions for improvement regarding these matters.

### **BACKGROUND AND ETHICS PROGRAM STRUCTURE**

As the largest operating administration within DOT, FAA is comprised of more than 45,000 employees located throughout its headquarters office in Washington, DC and its 11 regional and center level offices across the Nation. Under the direction of the FAA Administrator, a Presidentially appointed and Senate confirmed appointee, FAA's mission is to regulate civil aviation and U.S. commercial space transportation, maintain and operate air traffic control and navigation systems for both civil and military aircrafts, and develop and administer programs relating to aviation safety and the National Airspace System.

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The ethics program at FAA is located within the Office of Chief Counsel, hereafter referred to as the Ethics Office. The Deputy Chief Counsel for Policy and Adjudication serves as the administration's Deputy Ethics Official (DEO) and has oversight responsibility for the overall ethics program. The day-to-day operation of the ethics program is carried out under the direction of a Senior Managing Attorney for Ethics, hereafter referred to as FAA's primary ethics official, who is devoted to ethics full time. Assisting the primary ethics official are two ethics program analysts who both support the ethics program in varying capacities full time.

Due to FAA's large size and nationally dispersed employees, the Ethics Office uses its 11 Regional and Center counsels who serve the program as Designated Ethics Counselors (DECs) for their respective regions. As ethics counselors they are responsible for reviewing and certifying financial disclosure reports, rendering advice to employees on the standards of conduct and conflict of interest laws, and implementing the requirements for both initial and annual ethics training within their respective regions. The primary ethics official serves as the DEC for FAA Headquarters and provides general oversight and technical guidance to the Regional and Center DECs.

### **SUPPLEMENTAL STANDARDS OF CONDUCT REGULATION**

Part 6001 of 5 CFR prohibits FAA employees, or their spouses or minor children from holding stock or having any other securities interest in an airline or aircraft manufacturing company or in a supplier of components or parts to an airline or aircraft manufacturing company. However, there is an exception to the prohibition for interests in certain publicly traded or available investment funds and there is a provision for a waiver of the prohibition under certain conditions. Employees who acquire a financial interest subject to this regulation, as a result of gift, inheritance, or marriage, are required to divest the interest within a period set by the agency designee. Until divestiture, the employee must remain disqualified from participating in matters that could affect his or her financial interests.

### **PRINCIPAL FINDINGS**

#### **Recommendation: Take Immediate Action To Remedy The 21 Confidential Reports Identified As Having A Real Or Potential Conflict of Interest**

During the examination of the status reports associated with FAA's e-filing system, FAA reviewers identified 75 conflicts and 265 potential conflicts from their review of the confidential reports. OGE selected all 75 reports that identified a conflict for examination to determine what corrective action had been taken to remedy these concerns. OGE found evidence that remedial actions had been taken on 54 of the 75 identified conflicts, which ranged from a filers' recusal to divesting stock or other interests prohibited by DOT's supplemental regulation. However, OGE could not readily ascertain the remedial action taken for the remaining 21 reports identified by DECs in 6 of the 11 regions. In each instance, either remedial action had not yet been taken or OGE found no evidence that remedial action had been taken. The outstanding issues for these 21 reports are as follows:

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- Four filers were ordered to divest of their financial interest(s) but were appealing the decision. Of the four filers who were ordered to divest of their financial interest(s), two were appealing reconsideration to the FAA DEO and two were appealing reconsideration to the DAEO. Of the two appeals pending reconsideration with the DAEO, records indicated that one decision has been pending since 2004. These four filers were identified within the Southern and Eastern regions.
- Eight filers were ordered to divest of their financial interest(s) within 90 days. Of the eight filers who were ordered to divest of their financial interest(s) within 90 days, four of the eight filers were ordered to divest in either 2007 or 2008 but still listed the prohibited holding on their 2009 reports. These eight filers were identified within the Great Lakes, Northwest Mountain, Southern, and Western Pacific regions.
- Nine filers were identified as having a conflict but no evidence of actions taken. For the remaining nine filers evidence was not provided to the review team to reveal what actions were taken to remedy the filer's conflict. These nine filers were identified within the Southern, Western Pacific, and Southwest regions.

Preventing conflicts is the cornerstone of a successful ethics program. Because ethics laws prohibit Government employees from having financial conflicts of interest it is essential that ethics officials resolve all real or potential conflicts of interest or other violations in a timely manner. Therefore, OGE recommends that FAA take immediate action to remedy these 21 confidential reports identified as having a real or potential conflict of interest. As part of this action, FAA must determine whether or not the filers worked on matters that could have been affected by their financial interests.

It is also important to note that these 21 reports had been certified by reviewing officials despite the fact that remedial action had not been taken. OGE reminds ethics officials that a reviewing official's certification on a report indicates that the filer's agency has reviewed the report and that the reviewing official has concluded that each required item has been completed and that on the basis of information contained in the report, the filer is in compliance with applicable laws and regulations. Therefore, any lack of completeness or accuracy detected on a report should be resolved prior to a report being certified by the reviewing official. Knowing a report is complete and accurate is absolutely essential to carrying out an effective and substantive review of a report. To ensure that in the future reports are certified appropriately, OGE recommends that the DEO establish a process for periodically sampling confidential financial disclosure reports and that the DEO ensure that certifiers understand their responsibilities.

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### **Recommendation: Timely Resolve All Divestiture Appeals**

Where a confidential report reveals a violation, apparent violation, or potential violation of the applicable statutes and regulations and the Executive Order, the filer generally must take the remedial action within 3 months of being notified of the need to take action (except for cases of unusual hardship). See 5 CFR § 2634.605. To resolve actual or potential conflicts of interest on the part of confidential reporting individuals, these employees may be required to enter into a written ethics agreement in which they promise to undertake, as appropriate, a specific action to avoid or alleviate a conflict of interest. As interpreted by OGE, an appeal of divestiture invoked by FAA's supplemental regulation prohibition meets the definition of an ethics agreement and should be completed in accordance with 5 CFR § 2634.803(d).

As noted, of the four filers who were ordered to divest of their financial interest(s), two were appealing reconsideration to the DAEO. However, records indicated that one of the two appeals has been pending since 2004. This is very troubling and raises concerns that this matter may not have been otherwise resolved if not identified during the course of this review. OGE recommends that the DAEO establish formal procedures, in collaboration with the FAA DEO, to address the process for ensuring that divestiture appeals made by FAA employees are timely resolved. The procedures should also include a process for ensuring that employees remain disqualified from participating in matters that could affect their financial interests until a decision about divestiture is made.

### **Recommendation: Improve The Timeliness Issues That Exist Throughout FAA's Confidential Financial Disclosure Process**

During the review, OGE selected 39 new entrant and 151 annual confidential financial disclosure reports that were required to be filed in 2009. OGE found that the vast majority of these reports were not filed or reviewed timely. For example, of the 39 new entrant reports, 21 were filed late, and of the 151 annual reports, 55 were either reviewed late or certification appeared late even though there was no evidence that additional information was being sought from the filer. Furthermore, OGE noticed that these timeliness issues were associated with its review of the reports filed within the FAA regions. For example, in one region, review and certification did not occur until 180 days after the report had been filed.

In view of the importance that financial disclosure plays in preventing employees from committing ethics violations, this lack of timeliness raises concerns because untimely reviews or the lack of any review diminishes an agency's ability to provide timely and specific conflict-of-interest advice. Therefore, OGE recommends that the Ethics Office institute the practice of routinely conducting "ethics assistance reviews" as it relates to the confidential financial disclosure system outside of FAA headquarters to help ensure proper management focus and attention within each region. OGE also suggests that part of this review include checking OGE Form 450s for completeness, accuracy and compliance with both FAA and OGE requirements. Consistent monitoring of an agencies financial disclosure system operations and, when necessary, making adjustments to address any weaknesses, is essential in administering an effective decentralized confidential system.



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### **Recommendation: Update Written Procedures**

The Ethics Act requires the DAEO to develop DOT-wide written procedures that provide the overall framework for administering both the public and confidential financial disclosure systems. While written procedures have been developed, OGE found that they did not cover the operations of the DOT component systems. Therefore, each operating administration within DOT is required to document how they collect, review, certify, and maintain financial disclosure reports. During the examination of FAA's written procedures for administering both its public and confidential financial disclosure systems, OGE noticed that the last update made to them was in October 1998. Since that time, however, FAA has made significant changes in how it administers its financial disclosure program. OGE recommends that FAA update these procedures to more fully comply with the prescribed requirement. Beyond being required, written procedures are important in establishing consistency and efficiency in ensuring that agency ethics officials follow the same step-by-step procedures for administering their portion of the financial disclosure system. When properly used and updated, written procedures provide ethics officials with the opportunity to plan for system improvement.

In view of the importance of having a succession plan to help maintain the consistent administration of an ethics program, OGE also encourages the Ethics Office to develop written procedures that reflect the current practices for administering other elements of FAA's ethics program as well. OGE considers an agency's use of individualized written procedures to be a model agency practice and a valuable resource to both employees and ethics officials.

### **TECHNICAL ISSUES IDENTIFIED**

In addition to the findings noted above, OGE also identified two recurring technical issues that the Ethics Office must be mindful of during future filing cycles. Based on assurances received from the Ethics Office, OGE is making no formal recommendations but is making suggestions for improvement regarding these matters.

#### **Ensure That Public Filers Are Made Aware Of Certain Reporting Errors And Omissions**

The basic rule when reviewing financial disclosure reports is that an entry should disclose all required information and be sufficiently detailed to allow a full conflict of interest analysis. Anything more than that basic requirement is unnecessary; anything less is inadequate. In reviewing the public financial disclosure reports, OGE found two technical errors: filers either disclosing more information than is required to be reported (i.e., including retirement benefits from TSP accounts or reporting personal identifiable information such as bank account numbers and exact property addresses) or not disclosing enough information. Regarding the latter, OGE identified 35 new entrant and annual public reports that did not include either the filer's date of appointment or reporting status on the cover page. To ensure that reports are technically complete, OGE suggests that the Ethics Office annotate reports that require correction and remind filers (perhaps at the start of the filing season) about what constitutes complete and correct filing.

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### **Continue To Improve The Financial Disclosure Tracking Systems**

Financial disclosure tracking systems aid in the timely collection, review, and certification of financial disclosure reports. During the examination of FAA's tracking system for both public and confidential filers, OGE found both tracking systems useful in tracking the following elements: (1) the filer's name, position, and office; (2) the filer's reporting status; (3) the year the filer filed his/her report; and (4) the status of review. OGE also found the Ethics Office simultaneously tracks when public filers will receive annual ethics training. In addition, during the examination of the tracking feature associated within FAA's e-filing system for confidential filers, OGE found the status reports to be useful in determining the total number of confidential filers FAA-wide, the number of confidential reports that were filed, the number of reports that revealed real or potential conflicts, and the number of reports that revealed no conflicts. Despite the useful tracking elements identified on both tracking systems, however, OGE found it difficult to independently track the timeliness of both public and confidential reports using the tracking systems since dates of filing progression were not being recorded.

An effective tracking system should track the filing progression of each financial disclosure filer and should include the following dates: (1) the filer was notified of the filing requirement; (2) the filer was provided with the financial disclosure report; (3) the report was filed; (4) intermediate review commenced; (5) intermediate reviewer signed and dated the report; (6) the final review commenced; and (7) the reviewing official certified the report. OGE notes that the planned enhancements to FAA's e-filing system for confidential filers may incorporate these additional trackable items. However, until the system is enhanced, OGE strongly suggests that the Ethics Office expand the elements it tracks to include the progress of both public and confidential reports. Incorporating these additional elements into the tracking systems will help identify covered employees who have not filed their reports and may also help improve the timeliness of review and certification.

### **RECOMMENDATIONS**

In view of the corrective action authority vested with the Director of OGE under subsection 402(b)(9) of the Ethics Act, as implemented in subpart D of 5 C.F.R. part 2638, it is important that FAA take timely and effective action to resolve the following recommendations. These recommendations are considered necessary to bring FAA's financial disclosure program into compliance with current OGE regulations.

OGE recommends that FAA take the following actions:

1. Take immediate action to remedy the 21 confidential reports identified as having a real or potential conflict of interest. As part of this action, FAA must determine whether or not these filers worked on matters that could have been affected by their financial interests. Also, since these reports had been certified by reviewing officials despite the fact that remedial action had not been taken, OGE recommends that the FAA DEO establish a process for periodically sampling confidential financial disclosure reports and that the DEO ensure that certifiers understand their

## **Ethics Program Review: Federal Aviation Administration**

responsibilities to ensure that confidential reports are certified appropriately in the future.

2. In collaboration with the DAEO, establish formal procedures to address the process for ensuring that divestiture appeals made by FAA employees are timely resolved.
3. Institute the practice of routinely conducting "ethics assistance reviews" as it relates to the confidential financial disclosure system outside of FAA headquarters to help ensure proper management focus and attention within the FAA regions.
4. Update FAA's written procedures for administering both its public and confidential financial disclosure systems to more fully comply with the requirements of section 402(d)(1) of the Ethics Act.

### **AGENCY COMMENTS**

A draft of this report was provided to FAA for its review and comment. In a memorandum from FAA's Senior Managing Attorney for Ethics dated on April 22, 2010, FAA concurred with our recommendations and indicated that it will implement procedures to address all recommendations within a timetable set between 60 to 90 days.

Responses to the technical issues identified during the review were also provided. In its comments, FAA indicated that an Ethics Focus Group was tasked to provide recommendations on how the Ethics Office can communicate to public filers certain reporting errors and omissions. During the current filing cycle, the Ethics Office will provide individual guidance, when necessary, to ensure that public reports are completed consistent with OGE and FAA financial disclosure filing regulations. FAA will also continue to develop its electronic financial disclosure program with enhancements to the reviewer features of the program.

## OFFICE OF GENERAL COUNSEL AND LEGAL POLICY ROUTING SLIP

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